

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DILBER KUKIC,

Petitioner,

-against-

PHIL MELECIO, Superintendent,
Walkill Correctional Facility,

Respondent.

22 Civ. 02684 (CM) (SDA)

ANSWER

SYLVIA WERTHEIMER, an attorney duly admitted to practice before this Court, affirms under penalty of perjury pursuant to 28 U.S.C. § 1746 that:

1. I am an Assistant District Attorney, of counsel to Alvin L. Bragg, Jr., District Attorney of New York County. Pursuant to an arrangement with the Office of the Attorney General of the State of New York, I appear as the attorney of record on behalf of the respondent and represent the interests of the People of the State of New York in this matter.

2. I submit this Answer and accompanying Memorandum of Law in opposition to the petition for a writ of habeas corpus filed in this case (“Petition”). In the Petition, Dilber Kukic, an inmate at Walkill Correctional Facility, contends that he is being unconstitutionally imprisoned pursuant to a January 17, 2020, judgment of the New York State Supreme Court, New York

County. By that judgment, petitioner was convicted, after a jury trial, of two counts of Manslaughter in the Second Degree (N.Y. Penal Law § 125.15[1]), nine counts of Assault in the Second Degree (N.Y. Penal Law § 120.05[4]), four counts of Assault in the Third Degree (N.Y. Penal Law § 120.00[2]), and one count of Reckless Endangerment in the Second Degree (N.Y. Penal Law § 120.20). He was sentenced to from four to twelve years in prison on the manslaughter counts and to lesser concurrent prison terms on the other counts.

3. The Court should deny the Petition for the reasons set forth in respondent's Memorandum of Law. Factual statements in that Memorandum are based on the records cited in the Memorandum, all of which are in the custody of the New York County District Attorney's Office. Statements in the Petition are denied unless expressly admitted.

4. Pursuant to the Court's Order to Answer (ECF No. 6) and Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts, respondent will file the trial transcript along with this Answer.

5. Attached to this Answer as exhibits are copies of the following documents:

Exhibit A: The People's Brief in the Appellate Division;

Exhibit B: Petitioner's Brief in the Appellate Division;

Exhibit C: Petitioner's Reply Brief in the Appellate Division;

Exhibit D: The Appellate Division, First Department's Opinion;

Exhibit E: The People's Response to CPL 330.30 Motion;

Exhibit F: Petitioner's CPL 330.30 Motion;

Exhibit G: Petitioner's Reply on CPL 330.30 Motion;

Exhibit H: Hrynenko's Letter in Support of the Joint Leave Application;

Exhibit I: Petitioner's Letter in Support of the Joint Leave Application;

Exhibit J: Supplemental Letter in Support of the Joint Leave Application;

Exhibit K: The People's Letter Opposing the Leave Application;

Exhibit L: Hrynenko's Reply Letter in Support of the Joint Leave Application;

Exhibit M: Petitioner's Reply Letter in Support of the Joint Leave Application.

WHEREFORE, it is respectfully requested that the Petition be denied.

Dated: June 30, 2022
New York, New York

ALVIN L. BRAGG, JR.
District Attorney
New York County

BY: /s/: Sylvia Wertheimer
SYLVIA WERTHEIMER (SW-6225)
Assistant District Attorney
Attorney of Record
wertheimers@dany.nyc.gov